

Agenda

Compliance Committee Meeting

November 3, 2021 | 2:30-3:30 p.m. Eastern
Virtual Meeting

Attendee WebEx Link: [Join Meeting](#)

Introduction and Chair's Remarks

NERC Antitrust Compliance Guidelines*

Agenda Items

Topics

1. **Minutes* – Approve**
 - a. February 3, 2021 Open Meeting
2. **COVID-19 Related Activities* – Update**
3. **Facility Ratings* – Update**
4. **2022 CMEP Implementation Plan* – Update**
5. **Other Matters and Adjournment**

*Background materials included.

Antitrust Compliance Guidelines

I. General

It is NERC's policy and practice to obey the antitrust laws and to avoid all conduct that unreasonably restrains competition. This policy requires the avoidance of any conduct that violates, or that might appear to violate, the antitrust laws. Among other things, the antitrust laws forbid any agreement between or among competitors regarding prices, availability of service, product design, terms of sale, division of markets, allocation of customers or any other activity that unreasonably restrains competition.

It is the responsibility of every NERC participant and employee who may in any way affect NERC's compliance with the antitrust laws to carry out this commitment.

Antitrust laws are complex and subject to court interpretation that can vary over time and from one court to another. The purpose of these guidelines is to alert NERC participants and employees to potential antitrust problems and to set forth policies to be followed with respect to activities that may involve antitrust considerations. In some instances, the NERC policy contained in these guidelines is stricter than the applicable antitrust laws. Any NERC participant or employee who is uncertain about the legal ramifications of a particular course of conduct or who has doubts or concerns about whether NERC's antitrust compliance policy is implicated in any situation should consult NERC's General Counsel immediately.

II. Prohibited Activities

Participants in NERC activities (including those of its committees and subgroups) should refrain from the following when acting in their capacity as participants in NERC activities (e.g., at NERC meetings, conference calls and in informal discussions):

- Discussions involving pricing information, especially margin (profit) and internal cost information and participants' expectations as to their future prices or internal costs.
- Discussions of a participant's marketing strategies.
- Discussions regarding how customers and geographical areas are to be divided among competitors.
- Discussions concerning the exclusion of competitors from markets.
- Discussions concerning boycotting or group refusals to deal with competitors, vendors or suppliers.

- Any other matters that do not clearly fall within these guidelines should be reviewed with NERC's General Counsel before being discussed.

III. Activities That Are Permitted

From time to time decisions or actions of NERC (including those of its committees and subgroups) may have a negative impact on particular entities and thus in that sense adversely impact competition. Decisions and actions by NERC (including its committees and subgroups) should only be undertaken for the purpose of promoting and maintaining the reliability and adequacy of the bulk power system. If you do not have a legitimate purpose consistent with this objective for discussing a matter, please refrain from discussing the matter during NERC meetings and in other NERC-related communications.

You should also ensure that NERC procedures, including those set forth in NERC's Certificate of Incorporation, Bylaws, and Rules of Procedure are followed in conducting NERC business.

In addition, all discussions in NERC meetings and other NERC-related communications should be within the scope of the mandate for or assignment to the particular NERC committee or subgroup, as well as within the scope of the published agenda for the meeting.

No decisions should be made nor any actions taken in NERC activities for the purpose of giving an industry participant or group of participants a competitive advantage over other participants. In particular, decisions with respect to setting, revising, or assessing compliance with NERC reliability standards should not be influenced by anti-competitive motivations.

Subject to the foregoing restrictions, participants in NERC activities may discuss:

- Reliability matters relating to the bulk power system, including operation and planning matters such as establishing or revising reliability standards, special operating procedures, operating transfer capabilities, and plans for new facilities.
- Matters relating to the impact of reliability standards for the bulk power system on electricity markets, and the impact of electricity market operations on the reliability of the bulk power system.
- Proposed filings or other communications with state or federal regulatory authorities or other governmental entities.
- Matters relating to the internal governance, management and operation of NERC, such as nominations for vacant committee positions, budgeting and assessments, and employment matters; and procedural matters such as planning and scheduling meetings.

DRAFT Minutes

Compliance Committee

February 3, 2021 | 12:45–1:45 p.m. Eastern

Conference Call

Ms. Jan Schori, Chair called to order the duly noticed meeting of the Compliance Committee (CC) of the North American Electric Reliability Corporation (NERC) on February 3, 2021, at approximately 12:45 p.m., and a quorum was declared present.

Present at the meeting were:

Committee Members

Jan Schori, Chair
Jane Allen
George S. Hawkins
Robin E. Manning
Jim Piro
Roy Thilly, *ex officio*

Board of Trustees Members

Robert G. Clarke
Kenneth W. DeFontes
Suzanne Keenan
James B. Robb, President and Chief Executive Officer
Colleen Sidford

NERC Staff

Tina Buzzard, Assistant Corporate Secretary
Kelly Hanson, Senior Vice President and Chief Administrative Officer
Kiel Lyons, Senior Manager, Compliance Assurance
James McGrane, Senior Counsel
Sônia Mendonça, Senior Vice President, General Counsel, and Corporate Secretary
Steven Noess, Director, Regulatory Programs
Howard Gugel, Vice President, Engineering and Standards
Lonnie Ratliff, Senior Manager, Cyber and Physical Security Assurance
Stan Hoptroff, Vice President, Business Technology
Mark Lauby, Senior Vice President and Chief Engineer
Janet Sena, Senior Vice President, External Affairs
Andy Sharp, Vice President and Chief Financial Officer
Teri Stasko, Assistant General Counsel and Director of Enforcement
Mechelle Thomas, Vice President, Compliance

NERC Antitrust Compliance Guidelines

Ms. Buzzard directed the participants' attention to the NERC Antitrust Compliance Guidelines included in the agenda and indicated that all questions regarding antitrust compliance or related matters should be directed to Ms. Mendonça.

Chair's Remarks

Ms. Schori welcomed the members of the CC to the meeting. She thanked members of the CC and NERC Staff for their support during her tenure on the Board and highlighted recent CC achievements.

Minutes

Upon motion duly made and seconded, the CC approved the November 4, 2020 minutes.

Follow-up Regarding Action Items from Prior Meeting

Ms. Schori noted that there were no action items from the November 4, 2020, open meeting.

COVID-19 Related Activities

Ms. Stasko and Mr. Noess provided an update on recent COVID-19 related activities. Ms. Stasko reviewed the March 18, 2020 joint FERC/NERC industry guidance to ensure grid reliability amid potential coronavirus impacts and the extension of the May 28, 2020 ERO Enterprise Guidance temporarily expanding the Self-Logging Program for COVID-19-related noncompliance. Mr. Noess presented on compliance monitoring and certification activities during COVID-19, highlighting enhanced collaboration across the ERO Enterprise and engagement with registered entities.

Facility Ratings Activities

Mr. Noess introduced the update on Facility Ratings activities noting their continuation as an area of focus for the ERO Enterprise. Mr. Lyons discussed ongoing coordination and collaboration with registered entities, Federal Energy Regulatory Commission (FERC), North American Transmission Forum, Regional Entities, and Compliance and Certification Committee (CCC) Facility Ratings Task Force. Ms. Stasko presented on the identification and processing of noncompliance in the context of Facility Ratings.

Compliance Monitoring and Enforcement Program Quarterly Report

Mr. McGrane and Mr. Ratliff presented on enforcement metrics, the status of the Align project, coordinated focus on higher risk violations, violation aging and mitigation completion, and coordination with the Federal Energy Regulatory Commission on changes to the disclosure of noncompliance with the Critical Infrastructure Protection Reliability Standards.

Annual Review of Compliance Committee Mandate

Ms. Stasko noted that the Committee is required to review its mandate on an annual basis. She stated that the NERC Legal Department did not recommend any revisions to the Committee Mandate.

Adjournment

There being no further business, and upon motion duly made and seconded, the meeting was adjourned.

Submitted by,



Sônia Mendonça
Corporate Secretary

COVID-19-Related Activities

Action Update

Background

During the ongoing public health response to the COVID-19 pandemic, the ERO Enterprise continues to prioritize the health and safety of personnel and the continued reliability and security of the bulk power system (BPS). In 2020 and 2021, the ERO Enterprise deferred Compliance Monitoring and Enforcement Program (CMEP) and Certification on-site activities and released [guidance](#) temporarily expanding the Self-Logging Program to allow all registered entities to self-log instances of potential noncompliance with minimal or moderate risk related to their COVID-19 response. Under this temporary expansion of the Self-Logging Program, potential noncompliance related to COVID-19 impacts was resolved without further action.

On May 20, 2021, The ERO Enterprise [announced](#) a final extension of its postponement of on-site audits and other on-site activities and the temporary expansion of the Self-Logging Program through December 31, 2021.

The following ERO Enterprise approach for resuming on-site CMEP and Certification activities will be implemented after the official ERO Enterprise-wide deferment of on-site activities expires on December 31, 2021:

- The ERO Enterprise will continue to evaluate conditions and will resume on-site activities on a case-by-case basis, prioritizing health and safety in a risk-informed manner. This approach also applies to on-site portions of Certifications or Compliance Audits for Reliability Coordinators, Balancing Authorities, and Transmission Operators that are normally required.
- As the pandemic evolves, the ERO Enterprise will evaluate federal, state/provincial, and local guidance and conditions, along with registered entity facts and circumstances, to inform any determination related to resuming on-site activities.
- The ERO Enterprise may also engage in hybrid or partial on-site activities in limited form (for example, limiting on-site activities in some cases to only outdoor activities such as site visits to certain substations to confirm Facility Ratings or physical security requirements).
- The ERO Enterprise will remain closely and regularly coordinated to support harmonized application and outreach of this approach, and it will communicate regularly with industry as the situation evolves.

Facility Ratings

Action

Update

Background

NERC and Regional Entity staff will provide an update and presentation related to the ERO Enterprise's activities and continued focus on Facility Ratings, to include coordination that has occurred since the update provided to the NERC Compliance Committee at the [February 3, 2021 Open Meeting](#). The update will focus on the ERO Enterprise's strategy and highlight three key components: preventative, assessment (of current conditions and recent monitoring), and recovery (gap closure, sharing practices, registered entity opportunities for self-evaluation, enhanced mitigation activities, and consistent enforcement).

Summary

As shared during February 2021's meeting, Facility Ratings emphasis and coordination have grown and evolved since late 2018. NERC also worked in conjunction with the North American Transmission Forum and the Compliance and Certification Committee (CCC) to share the Facility Ratings Problem Statement in June 2020 that continues to inform ERO Enterprise emphasis.¹ The ERO Enterprise has also collaborated with the Facility Ratings Task Force, a joint task force of the CCC and the Reliability and Security Technical Committee, since 2020.

As Facility Rating issues do not appear to be declining, the ERO Enterprise's strategy going forward includes coordination to identify, manage, and communicate risks related to Facility Ratings throughout North America, to achieve the common goal of reducing risk to the reliability and security of the bulk power system.

¹ Problem Statement:

Recent years' audit and enforcement activities (including field verifications by the Regions and entities) have identified multiple instances of discrepancies between documented Equipment and/or Facility Ratings and actual field conditions. The information suggests generally that registered entities with strong controls and change management procedures typically have better data that result in more accurate ratings than those entities that have not taken meaningful steps to develop strong controls, change management focus, and/or validated field conditions with Facility Ratings databases. Those entities are most prone to discrepancies that may result in noncompliance. Because of this, and because of the recurring causes of the issues identified, the ERO Enterprise believes the issue is more widespread than what has been discovered to date.

2022 Compliance Monitoring and Enforcement Program Implementation Plan

Action

Update

Background

The Electric Reliability Organization (ERO) Enterprise¹ Compliance Monitoring and Enforcement Program (CMEP) Implementation Plan (IP) is the annual operating plan used by the ERO Enterprise in performing CMEP responsibilities and duties. The ERO Enterprise executes CMEP activities in accordance with the NERC Rules of Procedure (ROP) (including Appendix 4C), the Regional Delegation Agreements, and other agreements with regulatory authorities in Canada and Mexico. The ROP requires development of an annual CMEP IP.²

The ERO Enterprise is pleased to release the 2022 CMEP IP describing the risks that will be priorities for the ERO Enterprise's CMEP activities in 2022. Collectively, NERC and the Regional Entities have worked collaboratively throughout the IP's development to evaluate reports of NERC committees (especially the Reliability Issues Steering Committee (RISC)), ERO Enterprise analysis of events, and NERC reliability assessments to identify the existing and emerging risks to reliable and secure operations.

This strategic IP highlights the focus of our monitoring and enforcement efforts in 2022 on the risk elements identified within. The IP gives guidance to the employees of the ERO Enterprise involved with monitoring and enforcement, and through public posting informs the ongoing conversations with industry about the risks we all seek to mitigate. The risk elements described herein relate to the four risks designated "manage" and the four risk profiles, all identified in the 2021 RISC ERO Reliability Risk Priorities Report (RISC report).³ The risks designated "manage" in the RISC report: 1) Changing Resource Mix, 2) Cybersecurity Vulnerabilities, 3) Resource Adequacy and Performance, and 4) Critical Infrastructure Dependencies. In addition, the report focuses on the four risk profiles discussed in the RISC report: 1) Grid Transformation, 2) Security Risks, 3) Extreme Natural Events, and 4) Critical Infrastructure Interdependencies. While compliance with Reliability Standards is evaluated as part of continual monitoring, the main focus of a mature CMEP is on how the ERO Enterprise and industry proactively identify and mitigate risks to the bulk power system (BPS).

The IP represents the ERO Enterprise's high-level priorities for its CMEP activities. While the ERO Enterprise will decide how to monitor each registered entity based on its unique characteristics, registered entities should consider the risk elements and their associated

¹ The ERO Enterprise is comprised of NERC and the six Regional Entities, which collectively bring together their leadership, experience, judgment, skills, and supporting technologies to fulfill the ERO's statutory obligations to assure the reliability of the North American BPS.

² [NERC ROP](#), Appendix 4C Section 4.0 (Annual Implementation Plans).

³

https://www.nerc.com/comm/RISC/Documents/RISC%20ERO%20Priorities%20Report_Final_RISC_Approved_July_8_2021_Board_Submitted_Copy.pdf

areas of focus as they evaluate opportunities and priorities to enhance their internal controls and compliance operations to mitigate risks to reliability and security.

Summary

NERC will post the 2021 CMEP IP in late October.

During the implementation year, NERC or a Regional Entity may update its portions of the IP. Updates may include, but are not limited to, changes to compliance monitoring processes; changes to Regional Entity processes; or updates resulting from a major event, Federal Energy Regulatory Commission (FERC) Order, or other matter. Regional Entities submit updates to the NERC Compliance Assurance group, which reviews the updates and makes any necessary changes. When changes occur, NERC posts a revised plan on its website and issues an announcement.

2022 Risk Elements

The 2022 risk elements are included in Table 1 and reflect the continued maturation of the risk-based approach to compliance monitoring. The discrete risks identified within the risk elements provide focus for measuring current state and validating registered entity progress. By tracking improvements, industry and the ERO Enterprise can justify focusing on different risks in the future.

Compliance monitoring is not the only tool available to address the risks identified. CMEP staff may assist in various forms of outreach with industry to understand how effectively certain obligations are being implemented and to encourage best practices to achieve the common goal of mitigating risk to the BPS. Enforcement may consider these risks when assessing risk from possible noncompliance, assisting with mitigation plans, or assessing penalties. In Q3 2021, the ERO Enterprise initiated an effort to better understand entities' implementation of CIP-008, specifically around how a registered entity defines Cyber Security Incident and attempts to compromise. In Q4 2021 - Q1 2022, the ERO Enterprise will be collaborating with a small number of entities to focus on the practices and controls to evaluate the effectiveness of Incident Response reporting as related to the Reliability Standard requirements (e.g. CIP-008). In addition, this year CMEP staff seeks to thoroughly understand how Reliability Coordinators are performing their analysis and determining Interconnection Reliability Operating Limits (IROL), including how the recommended practices outlined in the Reliability Guideline – Methods for Establishing IROLs have been incorporated. Aggregated information on potential industry best practices and concerns will be outlined in public reports after completion of the activities, which is expected in 2022.

The COVID-19 pandemic has caused some risks to BPS Operations and the risk element descriptions have been updated slightly from 2021 to reflect some of these concerns. The risk from potential pandemics has been considered in years past as well as 2021. As identified in NERC's Preparedness and Operational Assessment published in Spring 2020,⁴ pandemic risk differs from many of the other threats facing the BPS because it is a "people event." The fundamental risk is the loss of staff critical to operating and maintaining the BPS such that firm loads could no longer be served reliably and securely. Regions may consider reviewing requirements related to personnel training in order to address this risk.

⁴https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_Pandemic_Preparedness_and_Op_Assessment_Spring_2020.pdf

The removal of the 2021 risk element “Inadequate Real-time Analysis During Tool and Data Outages” was informed by evaluating how entities adapt to loss of data and tools in performing Real Time Assessments (RTA).⁵ Also factored into the assessment, was that the 2021 RISC ERO Reliability Risk Priorities report downgrades the risk from “manage” to “monitor”.

Table 1: Comparison of 2021 Risk Elements and 2022 Risk Elements	
2021 Risk Elements	2022 Risk Elements
Remote Connectivity and Supply Chain	Remote Connectivity and Supply Chain
Poor Quality Models Impacting Planning and Operations	Models Impacting Long-term and Operational Planning
Gaps in Program Execution	Gaps in Program Execution
Determination and Prevention of Misoperations	Protection System Coordination
Loss of Major Transmission Equipment with Extended Lead Times	Extreme Events
Inadequate Real-time Analysis During Tool and Data Outages	

A summary of the reasoning that led to each identified risk element is as follows:

- Remote Connectivity and Supply Chain:** The protection of critical infrastructure remains an area of significant importance. This risk element focuses on the human element of security which continues to be a risk to the BPS, particularly given trusted third-party phishing, social engineering, and supply chain compromise.⁶ In addition, one of the effects of COVID-19 has been changes to the designed interaction between employees, vendors, and their workspaces which could have unintended effects on the controls in place to protect critical infrastructure.
- Models Impacting Long-Term and Operational Planning:** Compliance monitoring should seek to understand how registered entities manage the risk of planning in a changing environment, including the integration of inverter-based resources, increasing dependence on natural gas, and increasingly dynamic loads.
- Gaps in Program Execution:** Change management weaknesses have led to significant violations related to vegetation contacts, Facility Ratings, and maintenance of Protection System devices. This IP adds Reliability Standard CIP-008-6 R4, which provides specific requirements related to Reportable Cyber Security Incidents.

⁵ This evaluation is captured in the ERO Enterprise/FERC Joint Report on Real-Time Assessment, available at <https://www.ferc.gov/media/ferc-and-ero-enterprise-joint-report-real-time-assessments>.

⁶ See, e.g., [ERO Reliability Risk Priorities, February 2018](#); [RISC ERO Priorities Report, November 2021](#); [2021 State of Reliability report](#).

- **Protection System Coordination:** When protection systems are not coordinated properly, the order of execution can result in either incorrect elements being removed from service or more elements being removed than necessary.
- **Extreme Events:** Extreme events encompass a wide range of events that can cause major BPS impacts. As identified in the 2021 RISC report, recent cold weather events (like in ERCOT, MISO, and SPP) as well as heat events (like the 2020 California event) show that not only do extreme events pose challenges due to the nature and frequency of the extreme event itself, but also that the grid transformation also heightens the effects and complicates mitigation of an extreme event. Other extreme events include pandemics and threats to national security. Extreme events can stress the BPS and expose weaknesses such as poor coordination between neighboring entities in planning or operations.